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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,783	09/15/2003	Thomas E. Yingst	DKE 9734	9519
321	7590	09/22/2006	EXAMINER	
SENNIGER POWERS ONE METROPOLITAN SQUARE 16TH FLOOR ST LOUIS, MO 63102			SHAPIRO, JEFFERY A	
			ART UNIT	PAPER NUMBER
			3653	

DATE MAILED: 09/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/662,783

Applicant(s)

YINGST, THOMAS E.

Examiner

Jeffrey A. Shapiro

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 6/29/06.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5/2/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claim 23 is objected to because of the following informalities: In lines 5 and 6, the hinge is described as being near "a front" of the cabinet. It is suggested that the use of the terms "employee side" and "customer side" be maintained for consistency.

Appropriate correction is required.

2. Claim 35 is objected to because of the following informalities: In line 9, a "second damper" is mentioned. It is suggested that the use of the terms "first gas spring" and "second gas spring" or "first damper" and "second damper" be maintained for consistency. Appropriate correction is required.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 17-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perzon in view of Rhoads and further in view of Topper et al (US 6,547,346 B2).

Regarding **Claims 17-33**, **Perzon** discloses a product server (1), the product server having a transparent breath guard/cover (2), said product server being cooled (see abstract), said breath guard/cover being able to be rotated through an angle of

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between 0 and 90 degrees. See figures 1-3.

Note that looking at figure 1, the employee/server side is construed to be near the side lower left, proximate the cover handles. Therefore, when the employee opens the cover as shown in figure 1, access is provided therein. The transparent covers (see col. 2, lines 60-64) in the raised position act as breath guards when in the open position, preventing customers from breathing directly onto the frozen items stored in the freezer. When in their lowered, generally horizontal position, the covers protect and seal the items kept inside the freezer. The covers are pivotally attached to the freezer at the "customer side". See figure 2.

When open, the covers extend upward toward the rear employee side of the freezer/server. See figure 1.

As further described in **Claims 21, 33 and 34**, note that Perzon, figures 1-3 illustrates a transparent cover raising through an angle of 0 and 90 degrees.

Note that Perzon's freezer internal cavity is construed as being able to receive a pan or similar device.

Regarding **Claims 34-37**, Perzon does not expressly disclose, but **Rhoads** discloses a serving cabinet having an upper frame with shelves. See figure 1, for example.

At the time of the invention, it would have been obvious to incorporate Shelves, as taught by Rhoads, on Perzon's product serving apparatus above the open covers to provide a surface in a convenient position on which to place items such as products,

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cash, containers, waste containers, etc., as is commonly well-known in the art.

Perzon does not expressly disclose, but **Topper** discloses the following. As described in **Claims 17, 18, 23-25, 31 and 32**, Topper discloses a first power assist device (64) connected to the product server and the door/cover (42) that applies an upward force on the cover so as to assist pivotal movement of the cover to its raised position. A second power assist device (62) is connected to said product server and said cover so as to resist movement of the cover from its raised position to its lowered position. See figures 1-3 noting that during either lowering or raising the cover (42), one of the power assist devices (62 or 64) acts as a damper to help the operator lower or raise the door in a controlled manner, as described in **Claims 25 and 27**.

As described in **Claims 22 and 26**, note that the power assist devices are gas springs. See col. 5, lines 14-19.

As described in **Claims 19 and 28**, the gas springs assist the manual operation of the door (42). See col. 6, lines 3-6.

Generally, note that it can be construed that the cover (40) is pivotally attached near the customer side. See figure 1, for example, noting the relative proximity of the gas springs (62 and 64) and hinge (65) to transparent customer side (30).

Generally, note that the second power assist device (64) is connected to both a support frame (36) and said cover (40). See figure 8, noting gas springs (62 and 64).

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As described in **Claims 35, 37 and 39**, note that support frames (36) are mounted on the product server and at least one of the power assist devices (62) are attached to said support frame. See figure 8 and element (36)

At the time of the invention, it would have been obvious to use first and second power assist devices attached to both the server superstructure as well as the shelf frame, as taught by Topper, to assist a user in lifting and lowering the covers of Perzon. See Topper, Col. 6, lines 3-6.

Response to Arguments

5. Applicant's arguments with respect to Claims 17-37 have been considered but are moot in view of the new ground(s) of rejection.

Perzon discloses a freezer product server that has a transparent cover, which, when in its raised position, prevents a person on the opposing side from breathing on the items in the product storage area. As discussed above, Perzon reads on most of the independent and dependent claims. Rhoads provides teaching to incorporate a shelf above the opened cover so as to place objects important to completing a sale. See above. Topper provides teaching and motivation to incorporate a first and second power assist devices attached to both the server superstructure and the shelf frame. See above.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey A. Shapiro whose telephone number is (571)272-6943. The examiner can normally be reached on Monday-Friday, 9:00 AM-5:00 PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick H. Mackey can be reached on (571)272-6916. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JAS 

September 14, 2006


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